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C O N F I D E N T I A L SECTION 01 OF 03 BEIJING 001103

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JUSTICE FOR CHRISTOPHER LEHMANN AND MICHELE CRAWFORD,  
OPDAT, AND KYLE LATIMER, OIA  
HOMELAND SECURITY FOR MICHAEL LEPORE, OFFICE OF  
INTERNATIONAL AFFAIRS

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SUBJECT: REFORMERS SHRUG OFF SHRILL LEADERSHIP SPEECH ON  
JUDICIAL SYSTEM

REF: FBIS CPP 20070202710007

Classified By: Political Internal Unit Chief Susan  
Thornton. Reasons 1.4 (b/d).

Summary

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¶1. (C) Several academic and media contacts assessed that the recent rule of law speech given by Politburo Standing Committee member Luo Gan and reprinted in a Party journal (reftel) does not represent new trends in the thinking of the Central Government. The speech generally reflects concerns about the challenges facing China's judicial institutions, discusses priorities in the work of legal organs and describes the need to be "vigilant against foreign influences." While our contacts believe the speech confirms that structural judicial reform is on hold and that judicial independence is not likely to be realized in the near future, they maintained that there is still room for technical legal reforms and continued NGO activity. End Summary.

Luo Gan's Speech

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¶2. (SBU) On November 27, 2006, Chinese Communist Party Politburo Standing Committee Member Luo Gan spoke at a national conference on the work of judicial organs. Although the speech was reported in the media at the time of its delivery, the text of the speech was not published until the release of the most recent semimonthly edition of the Chinese Communist Party Central Committee's official journal, "Seeking Truth." The speech appears to signal the Party leadership's heightened concerns that China's increasingly complex society, expanding demands from new interest groups, and growing consciousness of legal rights in the population present major challenges to China's judicial institutions.

¶3. (SBU) Making reference to the oft-repeated theme of building a socialist "harmonious society," Luo listed numerous goals for the judicial organs (courts, procuracy, and public security organs) to address this problem. In particular, the speech focused on the use of local-level governmental organs to resolve disputes, the use of legal means to handle economic issues and to develop the new socialist countryside,

the proper approach to striking hard against crime, improvement of social management including the floating population and juvenile crime, and supervision of judicial organs.

14. (SBU) The speech also referred to the need to guard against "unfavorable" influences from the West. "Hostile forces" seek to use judicial organs as an opening to implement a strategy of Westernizing and dividing China, Luo stated. On the other hand, the speech noted that the enactment of laws and management of sensitive cases can have an international impact, and China must consider the international reaction to how it handles those issues. China should handle in a timely fashion foreign reaction and inflammatory foreign reporting. For foreign NGOs, as well as domestic social organizations (including entertainment establishments, internet bars, and recycling centers), Luo Gan stated that "the person in charge is responsible, the person who approves is responsible, and the person who registers is responsible." Luo stressed the need to maintain Party control in this dynamic, pluralizing environment.

#### Speech Does Not Represent New Rule of Law Policy

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15. (C) Embassy contacts in the academic and media arenas believed the speech contained little that was new regarding prospects for internal reforms and downplayed its significance. Constitutional scholar Professor Cai Dingjian (protect) of the China University of Political Science and Law said the speech was further evidence that systematic legal

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reform, which would address the problem of courts being subject to influence from local Party committees and local governments, is on hold. Professor He Weifang (protect) of Peking University held a similar view, commenting that there was "nothing new" in Luo's speech and that it merely represented "traditional" conservative thinking within the Party. Nevertheless, He noted that significant legal reforms are currently not possible. Zhang Shensi (protect), a reporter at The Legal Daily, also downplayed the significance of the speech, calling its stale content "impossible to get through." She added, however, that while central authorities remain skeptical about foreign legal exchanges, the courts and lawyers themselves are keen for such contacts.

#### Speech a Rebuttal to Calls for Legal Reform?

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16. (C) Professor Cai believed that one rationale for the speech was to respond to Professor He's 2005 proposal to amend the Organic Law of the People's Court by removing the term "People's" from the "People's Court." (Note: At an April 2005 Asia Foundation conference, Professor He explained that the name of the court should reflect the professional and not popular nature of judicial institutions in China. End Note.) Professor He's bold proposal continues to be discussed in leadership and policy circles today, Cai said. Separately, Professor He told poloffs that the speech was a reaction to discussion in recent years of structural legal reform. Professor He also noted that the National People's Congress (NPC) has rejected his proposal that the NPC should create a special committee on legal reform.

#### Foreign NGOs, International Opinion

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17. (C) As for the speech's remarks about foreign NGOs,

Professor Cai noted that while the speech did reflect distrust of foreign activities in China, it was likely not a signal that these organizations would be subject to further restrictions. Professor He observed that, although the central government remained concerned about the role of NGOs in so-called "color revolutions," many government institutions, including the National People's Congress and the Central Party School, still conduct projects with foreign NGOs.

18. (C) Professor Cai believed that the speech's call for consideration of foreign opinion in deciding domestic issues with an international impact to be a true reflection of the attention the government pays to outside opinion, citing the Chen Guangcheng case as a recent example. (Note: Chen Guangcheng, a self-trained blind legal activist, was recently sentenced to more than four years in prison after exposing family planning abuses and defending farmers with grievances in Shandong Province. After the international community expressed concern over procedural deficiencies in Chen's trial, a reviewing court sent the case back for retrial. The trial on remand nevertheless had its own procedural defects. End Note.) This consideration, however, does not necessarily mean that the government will modify its behavior in response, Cai noted.

#### Party Control

19. (C) Both He and Cai agreed that the absence of any discussion of judicial independence in the speech and its lengthy discussion of the need for Party supervision demonstrated that judicial independence is not in the cards anytime soon. To illustrate the point, Professor Cai described the reaction to the SPC's issuance of a judicial interpretation relating to an identity theft case. In that case, the plaintiff's classmate illegally used the plaintiff's name to gain admission to a university. The SPC ruled in the interpretation that the Constitution provided for a right to the integrity of one's name and a right to education. The interpretation resulted in strong

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criticism of the SPC for arrogating to itself the function of interpreting the Constitution, which supposedly properly lies with the NPC.

#### Prospects for Reform

10. (C) The two professors believed that there is still room for reform involving particular legal issues in both the criminal and civil procedural fields. According to Professor Cai, the Central Government does not see these issues as having political significance, even though in reality individual reforms can help to usher in overall systematic change. Legal reformers are, therefore, focused on pushing specific and incremental reforms as a way to gradually push the judicial system toward professionalization and independence. "It will take time, but we must not give up," he stated.

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